

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

LISA HERDAHL, on behalf of herself  
and her minor, school-age children,  
Plaintiff

v.

No. 3:94CV188-B-A

PONTOTOC COUNTY SCHOOL DISTRICT;  
PONTOTOC COUNTY BOARD OF EDUCATION;  
JOHN ALLEN, JOHN LAUDERDALE, JOHNNY  
MOUNCE, KEN ROYE, and RICKY SPENCER,  
in their official capacities as members  
of the Pontotoc County Board of Education;  
JERRY HORTON, in his official capacity  
as Superintendent of the Pontotoc County  
School District; STEVE CARR, in his  
official capacity as Principal of North  
Pontotoc Attendance Center; and RODNEY  
FLOWERS, in his official capacity as  
Assistant Principal of North Pontotoc  
Attendance Center,

Defendants

**ORDER**

This cause is presently before the court on the plaintiff's motion for summary judgment. Plaintiff Lisa Herdahl is a resident taxpayer and mother of five children currently attending the North Pontotoc Attendance Center ("Center"), a public school located in Ecu, Mississippi. The Center provides public education from kindergarten through twelfth grade. On December 20, 1994, the plaintiff filed this action seeking relief from the school prayer practices, religious Bible instruction, and other practices of the

defendants Pontotoc County School District ("District") and its officials that violate the Establishment Clause.<sup>1</sup> On April 18, 1995, this court preliminarily enjoined the defendants' school prayer practices, including the broadcast of morning prayer over the school intercom and organized, vocal prayer in classrooms during instructional time. Herdahl v. Pontotoc County Sch. Dist., 887 F. Supp. 902 (N.D. Miss. 1995). The court incorporates by reference the fact finding of its previous opinion. Pending a more complete record through discovery, the plaintiff did not seek preliminary relief regarding the defendants' other practices. Now that discovery is complete, the plaintiff seeks summary adjudication on all claims raised in her First Amended Complaint. Upon due consideration of the motion, the defendants' response thereto, the affidavits and memoranda submitted by the parties, the court now rules.

Prior to this court's preliminary injunction, the District's stated policy and practice on the issue of the school-wide prayer was that the Center would permit "student clubs or organizations brief access to the public address system, following the morning announcements by the administration, for the purpose of make any student announcement or any other free speech comments the students desire." The Aletheia Club, one of the recognized student clubs at

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<sup>1</sup>The Establishment Clause was made applicable to the states through the Fourteenth Amendment. Everson v. Board of Educ., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 2d 711 (1947).

the school, had frequently utilized this period of time to present a short devotional, or inspirational message, often including a short Bible reading, which was frequently followed by a short prayer. The entire devotional and prayer generally lasted no longer than a minute.

It is the District's position that they have created a "limited open forum" as described in the Equal Access Act.<sup>2</sup> 20 U.S.C. § 4071 et seq. By permitting student clubs or organizations the right to request and use the public address system for a brief moment for announcements or such other appropriate use, following the official morning announcements, the District contends that they cannot now discriminate against the Aletheia Club on the content of their message.

The court has serious reservations concerning the existence of such a "limited open forum" beyond the brief moment allowed for announcements. The District concedes that, with the exception of the Aletheia Club's morning activities, their previous practice only permitted the broadcast of information concerning student or school activities. These announcements are not comparable to the actual practicing or preaching of an organization's belief to students in a captive audience situation as the Aletheia Club was

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<sup>2</sup>The Equal Access Act prohibits public secondary schools that receive federal financial assistance and that maintain a "limited open forum" from denying "equal access" to students who wish to meet within the forum on the basis of the content of the speech at such meetings. 20 U.S.C. § 4071(a).

permitted to do. The court will, however, reserve judgment on this issue to allow counsel to produce evidence at trial and/or to develop their legal arguments in support of or in denigration of such a forum, as well as the validity of the defense itself given the captive environment.

The court further finds that the remaining claims in the plaintiff's amended complaint should be carried over to the trial of this cause, scheduled to begin March 4, 1996, for the hearing of evidence and arguments on the merits.

For the foregoing reasons it is ORDERED:

That the plaintiff's motion for summary  
judgment is carried over to trial.

THIS, the \_\_\_\_\_ day of February, 1996.

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**NEAL B. BIGGERS, JR.**  
**UNITED STATES DISTRICT JUDGE**